



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE ADVANTAGE REALTY
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. A Monetary Order to recover money for unpaid rent – holding the security deposit pursuant to Sections 38, 62 and 67 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed – holding the security deposit pursuant to Sections 38 and 67; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that he was not recording this dispute resolution hearing.

The Tenant stated that he did not receive any information from the Landlord. He received an email from the RTB which alerted him that he needed to call into the hearing. Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

- a. by leaving a copy with the person;
- b. if the person is a landlord, by leaving a copy with an agent of the landlord;
- c. by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- d. if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- e. as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- f. by any other means of service provided for in the regulations.

As the Landlord did not serve the Tenant at all with the Notice of Dispute Resolution Proceeding package, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Landlord's application against the Tenant. I dismiss all of the Landlord's claims without leave to re-apply.

Issue to be Decided

Is the Tenant entitled to the return of the security deposit?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this tenancy began as a fixed term tenancy on April 1, 2021. The fixed term was to end on March 31, 2022. Monthly rent was \$1,550.00 payable on the first day of each month. A security deposit of \$775.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenant vacated the rental unit near the end of December 2021.

The Landlord did not call into the hearing to provide evidence on their claims.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

RTB Policy Guideline #17 – Security Deposit and Set off provides a statement of the policy intent of the legislation. It states in part:

...

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. *The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- *a landlord's application to retain all or part of the security deposit; or*
- *a tenant's application for the return of the deposit.*

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of

the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

The Tenant has not applied for the return of the security deposit; however, because the Landlord did not attend this hearing to speak to their claims, pursuant to Section 38(1)(c) of the Act, the Landlord must “*repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations,*”

The Landlord must return \$775.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$775.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 09, 2022

Residential Tenancy Branch